

**To:** White, Elizabeth[white.elizabeth@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]  
**From:** Greenwalt, Sarah  
**Sent:** Fri 4/6/2018 1:35:49 PM  
**Subject:** RE: REMINDER: Proposed April 6 production in WOTUS FOIA litigation

Beth,

My apologies, I did not have time to review this. I understand that this will go out today.

**Sarah A. Greenwalt**

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

**From:** White, Elizabeth  
**Sent:** Thursday, April 5, 2018 6:03 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: REMINDER: Proposed April 6 production in WOTUS FOIA litigation

Are y'all ok with this? It's going tomorrow.

Sent from my iPhone

Begin forwarded message:

**From:** "Dubey, Susmita" <dubey.susmita@epa.gov>  
**Date:** April 2, 2018 at 3:53:47 PM EDT  
**To:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wehling, Carrie"

<Wehling.Carrie@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Zipf, Lynn" <Zipf.Lynn@epa.gov>, "Aarons, Kyle" <Aarons.Kyle@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>  
**Cc:** "Rementer, Nicole" <rementer.nicole@epa.gov>, "Miller, Kevin" <Miller.Kevin@epa.gov>, "Nguyen, Quoc" <Nguyen.Quoc@epa.gov>  
**Subject: REMINDER: Proposed April 6 production in WOTUS FOIA litigation**

A reminder about our Friday deadline for document production in CBD v. EPA. As noted below, we are asking for signoff by Wed April 4 in order to ensure that we can meet the production deadline. Thank you.

Susmita Dubey  
Office of General Counsel  
202-564-5577

-----Original Message-----

From: Dubey, Susmita

Sent: Tuesday, March 27, 2018 1:07 PM

To: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Greenwalt, Sarah

<[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>; White, Elizabeth <[white.elizabeth@epa.gov](mailto:white.elizabeth@epa.gov)>; Fotouhi, David <[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)>; Minoli, Kevin <[Minoli.Kevin@epa.gov](mailto:Minoli.Kevin@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Zipf, Lynn <[Zipf.Lynn@epa.gov](mailto:Zipf.Lynn@epa.gov)>; Aarons, Kyle <[Aarons.Kyle@epa.gov](mailto:Aarons.Kyle@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>

Cc: Rementer, Nicole <[rementer.nicole@epa.gov](mailto:rementer.nicole@epa.gov)>; Miller, Kevin

<[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>; Nguyen, Quoc <[Nguyen.Quoc@epa.gov](mailto:Nguyen.Quoc@epa.gov)>

Subject: FOR YOUR REVIEW: Proposed April 6 production in WOTUS FOIA litigation

Below for your review is a link to the March proposed document release under the Freedom of Information Act request relating to the Waters of the United States Rule. The production is scheduled for Friday April 6, 2018, and is being made pursuant to a commitment in a status report filed in litigation over this FOIA request. We committed in the status report to rolling productions at the end of each month, but plaintiffs agreed to provide an additional week given several other FOIA responses due by the end of March. We are seeking your signoff no later than April 4, so we have time to prepare the production by the deadline we committed to meet. (I have no idea why the URL for the link is so long, but it seems to work.)

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my.sharepoint.com/personal/rementer\_nicole\_epa\_gov/\_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fremen

## Background

On March 22, 2017, EPA received a FOIA request from the Center for Biological Diversity (CBD) requesting certain records relating to the development and implementation of EO 13778, relating to the Waters of the United States Rule. On April 19, EPA received a second request from CBD requesting records relating to EPA's revision of the rule. Both requests are attached. On June 1, CBD filed a complaint in the federal district court for the District of Columbia alleging that EPA failed to respond to the first request. Subsequently, CBD amended its complaint to add allegations claiming that EPA failed to respond to the April 19 request. We will be filing an answer to the amended complaint on January 29.

On September 29, EPA filed a status report with the court describing the search it was conducting and explaining that the search conducted for both requests identified approximately 90,000 potentially responsive records. EPA further stated that it intended to review 2000 documents per month and would produce a monthly rolling release of responsive, non-privileged documents, with the first release on or about November 30. We have delivered document productions to CBD at the end of each month thereafter.

## Proposed production

The proposed document release for the April 6 production is available through the Sharepoint link above, with all documents in a single pdf file. The proposed release includes about 400 documents totaling almost 1000 pages, and reflects a search conducted for responsive documents created between January and April 2017. Custodians who were identified as having potentially responsive documents include members of the transition team as well as the Agency's Designated Ethics Official and his staff. The proposed production includes communications with outside parties, including ECOS and individual states, as well as numerous emails from citizens to the Administrator regarding the WOTUS rule. Some information is redacted because it is subject to the deliberative process privilege, as well as redactions of personal identifying information, such as conference line numbers and personal email addresses.

Please send me any comments via email, referencing the DOC ID (stamped on the bottom of each page). I will then be able to go into Relativity and address any concerns. And please feel free to contact me with any questions. Thank you for your time on this.

Susmita Dubey

Office of General Counsel

202-564-5577